

## CIVIL SERVICE COMMISSION MINUTES

March 3, 1999

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 310 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Mary Gwen Brummitt  
Gordon Austin  
Sigrid Pate

Comprising a quorum of the Commission

Absent were:

Gloria Valencia-Cothran  
Roy Dixon

Larry Cook, Executive Officer  
Arne Hansen, Deputy County Counsel  
Joy Kutzke, Reporting

**CIVIL SERVICE COMMISSION MINUTES**  
**March 3, 1999**

2:00 p.m.      CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m.      OPEN SESSION: Room 358, 1600 Pacific Highway,  
San Diego, California 92101

PRE-AGENDA CONFERENCE

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
6,7,13,14			5

COMMENTS Motion by Pate to approve all items not held for discussion; seconded by Brummitt. Carried.

**CLOSED SESSION AGENDA**  
**County Administration Center, Room 458**  
**(Notice pursuant to Government Code Sec. 54954.2)**  
**Members of the Public may be present at this**  
**location to hear the announcement of the**  
**Closed Session Agenda**

- A. Commissioner Brummitt: Andrea LeClerc, Esq., on behalf of **Brent Koerting** appealing an Order of Compulsory Leave from Department of Public Works.

**MINUTES**

1. Approval of the Minutes of the regular meeting of February 3, 1999.

**Approved.**

**CONFIRMATION OF ASSIGNMENTS/REASSIGNMENTS**

2. Commissioner Dixon as hearing officer in the appeal of **Bessie Cottingham** appealing an Order of Removal from the Health and Human Services Agency.

**Confirmed.**

3. Commissioner Valencia-Cothran reassigned as hearing officer in the appeal of **Susan Marcus** appealing an Order of Demotion in Compensation and Transfer from the Public Defender. Commissioner Dixon previously assigned.

**Confirmed.**

4. Commissioner Pate as hearing officer in the appeal of **Indira M. Avadhani** from an Order of Termination from the Probation Department.

**Confirmed.**

#### **WITHDRAWALS**

5. Commissioner Dixon: Robert C. Rice, Esq. on behalf of **Robert Parsons** appealing an Order of Removal from the Health and Human Services Agency.

**Withdrawn.**

#### **SELECTION PROCESS FINDINGS/COMPLAINTS**

##### **Complaints**

6. **David A. Pugh** appealing DHR's determination that he is ineligible to compete in the recruitment process for Food Services Worker and Community Service Officer.

RECOMMENDATION: Deny request.

Mr. Pugh addressed the Commission regarding DHR's determination that he was ineligible to compete in the recruitment process for Food Services Worker and Community Service Officer. Blair Provo, responded on behalf of DHR, explaining that Mr. Pugh had been dismissed during his probationary period as a Food Services Worker in 1995. She explained that the circumstances surrounding DHR's determination in this matter do not necessarily disqualify applicant indefinitely. Conditions of dismissal and classifications to which prospective applicants apply are elements in determining future eligibility.

**Motion by Brummitt to approve staff recommendation; seconded by Pate. Carried.**

7. **Mark Hamersly** appealing the removal of his name by DHR from the Deputy Probation Officer employment list.

RECOMMENDATION: Deny request.

Mr. Hamersly presented his concerns to the Commission regarding the removal of his name from the Deputy Probation Officer employment list by DHR as the result of the background investigation by the Probation Department. The issues involved in this matter surrounded the validity of the accreditation of the institution from which Mr. Hamersly obtained his Bachelor's and Master's Degrees. Merrilyn Carpenter, on behalf of the Probation Department, responded that the school is currently under investigation and is not considered to be an accredited university by the County.

**Motion by Pate to approve staff recommendation; seconded by Brummitt. Carried.**

### **Findings**

8. **Armando C. Solorio** appeal of removal of his name by DHR from the employment list for Correctional Deputy Probation Officer.
9. **Randy Estigoy** appeal of removal of his name by DHR from the employment list for Corrections Deputy Sheriff.
10. **Luisito R. Delos Reyes** appeal of removal of his name by DHR from the employment list for Corrections Deputy Sheriff.
11. **Tessa A. Kaupe** appeal of removal of her name by DHR from the employment list for Corrections Deputy Sheriff.
12. **Kevin P. Carson** appeal of removal of his name by DHR from the employment list for Corrections Deputy Sheriff.

RECOMMENDATION: Ratify item Nos. 8 through 12. Appellants have been successful in the appellate process provided by Civil Service Rule 4.2.2.

**Item Nos. 8 through 12 ratified.**

### **COMPULSORY LEAVE**

#### **Findings**

13. Commissioner Brummitt: Andrea LeClerc, Esq., on behalf of **Brent Koerting** appealing an Order of Compulsory Leave from Department of Public Works.

#### **FINDINGS AND RECOMMENDATIONS:**

Employee has been employed by the Department of Public Works (DPW) as an Equipment Operator for the past ten years and has performed satisfactorily during that time period. Employee testified that he began having problems with DPW in 1991 and by early 1998 his difficulties escalated to the point of sleep deprivation which resulted in drowsiness while driving large commercial vehicles. Testimony at the hearing revealed DPW's offers of solutions to alleviate Employee's concerns. Employee was referred for a fitness for duty exam wherein it was determined that he was unfit for duty. The Department placed Employee on Compulsory Leave (on two occasions) and Family Leave. Employee filed an appeal with the Commission the second time the Department placed him on Compulsory Leave at which time the matter proceeded to hearing. This hearing officer concludes that DPW was diligent in communicating with Employee in writing regarding his employment status. DPW may have been disadvantaged in its communication with Employee because of questionable communication from EAP. Employee may have been improperly placed on Family Leave.

It is this hearing officer's recommendations that: The Order of Compulsory Leave commencing October 24, 1998 is affirmed. Employee was properly placed on Compulsory Leave commencing on that date, and the Compulsory Leave should continue until such time that Employee is deemed able to return to work by the appropriate expert(s); this proposed decision is without prejudice, i.e., employee may request the Civil Service Commission to take further action if the merit basis of the personnel system is allegedly violated as it relates to Compulsory Leave; and that this proposed decision shall become effective upon the date of approval of the Civil Service Commission.

**Motion by Brummitt to approve Findings and Recommendations;  
seconded by Pate. Carried.**

## **INVESTIGATIONS**

### **Findings**

14. Commissioner Pate: John Richards, Esq. on behalf of **Alicia Mariscal** requesting a Rule XI investigation regarding the manner in which her employment ended with the Department of Agriculture, Weights and Measures.

### **FINDINGS AND RECOMMENDATIONS:**

Complainant had been employed in the Department of Agriculture, Weights & Measures (AWM) from 1977 until the time of her resignation on April 23, 1997. In 1994, Complainant filed various requests to County organizations regarding her employment dissatisfaction with the AWM culminating in a court decision as a result of her claim of constructive discharge. This investigation revealed that constructive discharge may relate only to employment disputes generated by employees in the private sector and this investigative officer could find no evidence of a public entity having made a decision on constructive discharge. The Civil Service Commission of the County of San Diego is authorized by Charter to investigate allegations of forced resignation. This investigation was approached primarily as an allegation of forced resignation rather than constructive discharge. According to the courts, constructive discharge is neither a tort nor a breach of contract; it is a doctrine that transforms a resignation into a firing. Conditions giving rise to the resignation must be sufficiently extraordinary and egregious to overcome a reasonable employee to remain on the job. A constructive discharge can only exist if a reasonable person faced with alleged intolerable employer actions or working conditions would have no reasonable alternative but to quit. This investigative officer concludes that the verbal and written responses given by the County in response to the various complaints appear to be reasonable. It is therefore recommended that: (1) the Civil Service Commission determine that the Department of Agriculture, Weights and measures did not violate the merit basis of the personnel system; (2) Complainant's claim of constructive discharge be denied; and (3) the Commission read and file this report.

**Motion by Pate to approve Findings and Recommendations; seconded by Brummitt. Carried.**

**OTHER MATTERS**

**Extension of Temporary Appointments**

15. Health and Human Services Agency

1 Residential Care Worker I (Susan Heard)

16. Planning and Land Use

1 Associate Planner (Stella Caldwell)

RECOMMENDATION: Ratify item Nos. 15 and 16.

**Item Nos. 15 and 16 ratified.**

17. Everett Bobbitt, Esq. requesting payment of interest on previous actions involving back-pay.

RECOMMENDATION: Approve Supplemental Order awarding interest on back pay.

**Staff recommendation approved.**

18. Commissioner Valencia-Cothran: Executive Officer's Compensation.

RECOMMENDATION: Grant a 4.8% salary adjustment.

**Commission President's recommendation approved.**

19. Public Input.

ADJOURNMENT: 3:15 p.m.

**NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE APRIL 21, 1999.**